

Senate Engrossed House Bill

State of Arizona
House of Representatives
Forty-fifth Legislature
Second Regular Session
2002

CHAPTER 82

HOUSE BILL 2277

AN ACT

AMENDING SECTION 20-120, ARIZONA REVISED STATUTES; RELATING TO INSURANCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)



1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 20-120, Arizona Revised Statutes, is amended to
3 read:

4 20-120. Payment bonds for third party intermediary entities;
5 contract provisions; definitions

6 A. A health care insurer shall not contract with a third party
7 intermediary entity for the delivery or provision of health benefits or
8 services by or through that entity to a group or panel of covered persons,
9 unless the third party intermediary entity at its own expense secures a
10 payment bond or posts a cash deposit pursuant to this section.

11 B. The following apply to a payment bond required by this section:

12 1. The payment bond shall be in a face amount that is at least equal
13 to twice the average monthly payment amount that the third party intermediary
14 entity is entitled to receive under the terms of its contract with the health
15 care insurer.

16 2. The payment bond shall be executed by a surety company or companies
17 holding a certificate of authority to transact surety business in this state
18 issued by the director pursuant to chapter 2, article 1 of this title.

19 3. The payment bond serves solely as a source of payment of claims for
20 covered health benefits or services provided by subcontracted health care
21 professionals to the group or panel of covered persons under the contract
22 between the third party intermediary entity and the health care insurer.

23 4. A subcontracted health care professional who has provided covered
24 health care benefits or services to one or more covered persons under a
25 subcontract with a third party intermediary entity, and who has not been paid
26 in full for the covered benefits or services provided pursuant to the
27 subcontract within ninety days after the date on which the last of the
28 benefits or services were provided, may sue on the payment bond for the
29 unpaid amount owed under the subcontract, may prosecute the action to final
30 judgment and may execute on the judgment against the payment bond. The suit
31 shall commence within one year after the date on which the last of the
32 benefits or services sued for were provided.

33 5. A health care insurer that pays claims of subcontracted health care
34 professionals for covered health care benefits or services that were the
35 contractual responsibility of a third party intermediary entity may sue on
36 the payment bond for the claims amounts paid, may prosecute the action to
37 final judgment and may execute on the judgment against the payment bond. The
38 suit shall commence within one year after the date on which the last of the
39 claims sued for were paid.

40 6. The payment bond shall include a provision allowing the prevailing
41 party in a suit on the bond to recover as a part of the judgment a reasonable
42 attorney fee as determined by the court.

43 7. A health care insurer shall review annually a payment bond secured
44 pursuant to this section to determine whether the face amount of the payment
45 bond needs to be adjusted.

C. The following apply to cash deposits required by this section:

1. A cash deposit posted pursuant to this section shall be in a face AN amount that is at least equal to twice the average monthly payment amount that the third party intermediary entity is entitled to receive under the terms of its contract with the health care insurer and shall be deposited with and held in trust by the state treasurer.

2. Instead of requiring a third party intermediary to post the entire cash deposit at the outset, for a six month period beginning with the initial contract payment, the health care insurer may withhold from the monthly contract payment to be made to the third party intermediary entity an amount that is equal to one-sixth of the cash deposit required to be posted pursuant to this subsection. The health care insurer shall transfer the monies withheld pursuant to this subsection for deposit with the state treasurer to be held in trust as provided in this section. Monies withheld and not yet deposited with the state treasurer pursuant to this subsection are held in trust for the purposes described in this section and are not the monies of the health care insurer.

3. A cash deposit made pursuant to this section serves solely as a source of payment of claims for covered health benefits or services provided by subcontracted health care professionals to the group or panel of covered persons under the contract between the third party intermediary entity and the health care insurer.

4. A subcontracted health care professional who has provided covered health care benefits or services to one or more covered persons under a subcontract with a third party intermediary entity and who has not been paid in full for the provided benefits or services pursuant to the subcontract within ninety days after the date on which the last of the benefits or services were provided, may sue on the cash deposit for the unpaid amount owed under the subcontract, may prosecute the action to final judgment and may execute on the judgment against the cash deposit. The suit shall commence within one year after the date on which the last of the benefits or services sued for were provided.

5. A health care insurer that pays claims of subcontracted health care professionals for covered health care benefits or services that were the contractual responsibility of a third party intermediary entity may sue on the cash deposit for the claims amounts paid, may prosecute the action to final judgment and may execute on the judgment against the cash deposit. The suit shall not commence before one year after the date on which the last of the claims sued for were paid.

6. Out of monies held on deposit by the state treasurer for a specific third party intermediary entity pursuant to this section, monies may be awarded and paid to the prevailing party in a suit on the cash deposit. The court may award as a part of the judgment on that cash deposit a reasonable attorney fee as determined by the court.

1 7. A health care insurer shall review annually a cash deposit posted
2 pursuant to this section to determine whether the face amount needs to be
3 adjusted.

4 D. The following apply to contracts between a third party intermediary
5 entity and a health care insurer:

6 1. The contract shall require the third party intermediary entity to
7 submit a quarterly report on the timeliness of payments made to all
8 subcontracted health care professionals to the health care insurer to measure
9 compliance with payment timeliness standards.

10 2. The contract shall require the third party intermediary entity to
11 pay its subcontracted health care professionals within the time period
12 specified under section 20-3102.

13 E. This section does not:

14 1. Authorize any entity that does not hold a certificate of authority
15 to engage in the business of insurance in this state.

16 2. Require a third party intermediary entity to post a payment bond
17 or cash deposit if the entity holds a certificate of authority as an
18 administrator, disability insurer, service corporation or health care
19 services organization.

20 3. Create any new private right or cause of action for or on behalf
21 of any person, other than a right to sue on a payment bond or cash deposit
22 under subsection B or C of this section. A general creditor or judgment
23 creditor or any other claimant of a third party intermediary entity shall not
24 levy on any payment bond or cash deposit secured or held pursuant to this
25 section.

26 4. Require a third party intermediary entity that serves as a provider
27 network for an affiliated staff or group model health care services
28 organization under a common line of ownership or control to post a payment
29 bond or cash deposit to that health care services organization.
30 Notwithstanding that a payment bond or cash deposit is not required under
31 this paragraph, the health care services organization may require the third
32 party intermediary entity to meet other payment bond or cash deposit
33 requirements established by the health care services organization. If the
34 health care services organization does not require the third party
35 intermediary entity to post a payment bond or cash deposit, the health care
36 services organization is responsible for payment of claims for covered health
37 benefits or services that are provided by subcontracted health care
38 professionals to covered persons if the third party intermediary entity fails
39 to make payment pursuant to the subcontracts.

40 5. Require one or more persons who are licensed health care
41 professionals, hospitals or other institutional health care providers to post
42 a payment bond or cash deposit under a contract where the assumption of
43 business risk is limited to benefits or services that may be lawfully
44 furnished within the lawful scope of practice by that person or persons.

1 6. Limit the ability of a health care insurer to impose additional
2 financial requirements on a third party intermediary entity.

3 7. Require a third party intermediary entity to post a payment bond
4 or cash deposit if the entity either:

5 (a) has not been delegated responsibility to process and pay the
6 claims of the health care providers for which the entity has assumed the
7 business risk.

8 ~~(b) Has been delegated responsibility to process and pay the claims~~
9 ~~of those health care providers who have a written contract with the entity~~
10 ~~that contains a provision by which the providers agree to hold the applicable~~
11 ~~disability insurer, service corporation or health care services organization,~~
12 ~~their enrollees, insureds or subscribers harmless from having to pay the~~
13 ~~claims of such providers in the event the entity fails to pay such claims.~~

14 F. Any bond that is secured or deposit that is posted under this
15 section shall be released and returned:

16 1. To the third party intermediary entity on extinguishment by
17 reinsurance or otherwise of substantially all liability of the insurer for
18 the security of which the bond or deposit is held.

19 2. To the third party intermediary entity to the extent the bond or
20 deposit is more than the amount required.

21 3. On proper order of a court of competent jurisdiction to the
22 receiver, conservator, rehabilitator or liquidator of the third party
23 intermediary entity or to any other properly designated official or officials
24 who succeed to the management and control of the third party intermediary
25 entity's assets.

26 G. A surety shall not terminate a bond issued pursuant to this section
27 unless the surety files a written notice of termination with the director at
28 least thirty days before terminating the bond.

29 H. A release of deposited monies shall not be made except on
30 application to and the written order of the director. The director is not
31 personally liable for the good faith release of all or any part of a deposit.

32 I. A third party intermediary entity shall approve or deny claims in
33 the manner prescribed in chapter 20 of this title.

34 J. This section applies to all contracts between third party
35 intermediary entities and health care insurers that are entered into or
36 renewed from and after December 31, 2000.

37 K. For the purposes of this section:

38 1. "Administrator" means an entity that holds a certificate of
39 authority pursuant to chapter 2, article 9 of this title.

40 2. "Covered persons" means enrollees, insureds, members, subscribers,
41 dependents or other persons who are covered by a contract of disability
42 insurance, subscription contract, evidence of coverage or other prepaid plan
43 or arrangement with a health care insurer.

1 3. "Health care insurer" means a disability insurer, service
2 corporation or health care services organization.

3 4. "Health care professional" has the same meaning prescribed in
4 section 20-3151.

5 5. "Health care services organization" means an entity that holds a
6 certificate of authority pursuant to chapter 4, article 9 of this title.

7 6. "Service corporation" means an entity that holds a certificate of
8 authority pursuant to chapter 4, article 3 of this title.

9 7. "Third party intermediary entity" means an entity that assumes
10 business risk through a written contract with a disability insurer, service
11 corporation or health care services organization for the cost of providing
12 covered health care benefits or services to a group or panel of covered
13 persons if not all of those benefits or services will be provided by the
14 entity or by licensed health care professionals who are subcontracted to the
15 entity.

16 Sec. 2. Applicability

17 A third party intermediary entity exempt on or before the effective
18 date of this act from having to post a bond or deposit under section 20-120,
19 subsection E, paragraph 7, subdivision (b), Arizona Revised Statutes, as
20 repealed by this act may continue to be delegated responsibility to process
21 and pay the claims of health care providers that have a written contract with
22 the entity, without having to post a bond or deposit, as long as both of the
23 following conditions are met:

24 1. All of the written subcontracts signed with the entity by health
25 care providers contain a provision by which the providers agree to hold the
26 applicable disability insurer, service corporation or health care services
27 organization and, except for copayments, coinsurance and deductible amounts
28 and noncovered services, their insureds, subscribers or enrollees harmless
29 from having to pay the claims of the providers in the event the entity fails
30 to pay the claims.

31 2. The entity files a notice with the department of insurance on or
32 before the effective date of this act, stating the name and business address
33 of the entity and the name of the applicable disability insurer, service
34 corporation or health care services organization with which the entity is
35 affiliated as a third party intermediary and attesting by affidavit that all
36 of the written subcontracts signed with the entity by health care providers
37 contain a provision by which the providers agree to hold the applicable
38 disability insurer, service corporation or health care services organization
39 and, except for copayments, coinsurance, deductibles and noncovered services,
40 their insureds, subscribers or enrollees harmless from having to pay the
41 claims of the providers in the event the entity fails to pay the claims. The
42 entity shall also provide a copy of this notice to the applicable disability
43 insurer, service corporation or health care services organization.

APPROVED BY THE GOVERNOR APRIL 29, 2002.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 30, 2002.

Passed the House March 21, 2002,

by the following vote: 54 Ayes,

0 Nays, 6 Not Voting

[Signature]
Speaker of the House

Norman L. Moore
Chief Clerk of the House

Passed the Senate April 17, 2002,

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

[Signature]
President of the Senate

Charmine Billington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20____,

at _____ o'clock _____ M.

Governor of Arizona

H.B. 2277

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

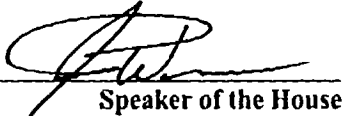
Secretary of State

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

April 25, 2002,

by the following vote: 53 Ayes,

1 Nays, 6 Not Voting


Speaker of the House

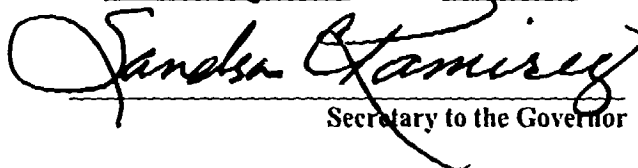

Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

25 day of April, 2002,

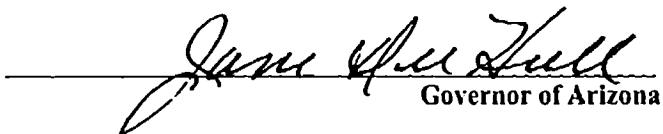
at 1:59 o'clock P M.


Secretary to the Governor

Approved this 29 day of

April, 2002,

at 11:01 o'clock A M.

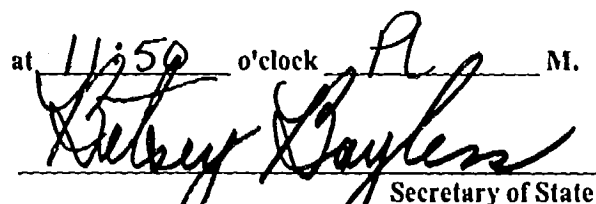

Governor of Arizona

H.B. 2277

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 30 day of April, 2002,

at 11:50 o'clock P M.

Secretary of State